

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

KINGVISION PAY-PER-VIEW)
CORP., LTD.,)
Plaintiff(s),)
v.)
BERNARD WILLIAMS,)
individually and dba AVENUE)
CLUB,)
Defendant(s).)

NO. C 04-2504 BZ

**ORDER SCHEDULING
JURY TRIAL AND
PRETRIAL MATTERS**

Following the Status Conference on August 8, 2005, **IT IS**
HEREBY ORDERED that the Case Management Statement is adopted,
except as expressly modified by this Order. It is further
ORDERED that:

1. DATES

Trial Date: Monday, 5/1/2006, four days, at 8:30 a.m.

Pretrial Conference: Tuesday, 4/18/2006, at **4:00 p.m.**

Last Day to Hear Dispositive Motions: Wednesday, 2/15/2006

Last Day for Expert Discovery: Friday, 1/6/2006

Last Day for Expert Disclosure: Friday, 12/30/2005

1 Close of Non-expert Discovery: Friday, 12/23/2005

2 . DISCLOSURE AND DISCOVERY

3 The parties are reminded that a failure to voluntarily
4 disclose information pursuant to Federal Rule of Civil
5 Procedure 26(a) or to supplement disclosures or discovery
6 responses pursuant to Rule 26(e) may result in exclusionary
7 sanctions. Thirty days prior to the close of non-expert
8 discovery, lead counsel for each party must serve and file a
9 certification that all supplementation has been completed.

10 In the event a discovery dispute arises, **lead counsel** for
11 each party must meet in person or, if counsel are outside the
12 Bay Area, by telephone and make a good faith effort to resolve
13 their dispute. Exchanging letters or telephone messages about
14 the dispute is insufficient. The Court does not read
15 subsequent positioning letters; parties must instead make a
16 contemporaneous record of their meeting using a tape recorder
17 or a court reporter.

18 In the event they cannot resolve their dispute, the
19 parties must participate in a telephone conference with the
20 Court **before** filing any discovery motions or other papers.
21 The party seeking discovery must request a conference in a
22 letter served on all parties not exceeding two pages (with no
23 attachments) which briefly explains the nature of the action
24 and the issues in dispute. Other parties must reply in
25 similar fashion within two days of receiving the letter
26 requesting the conference. The Court will contact the parties
27 to schedule the conference.

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1 3. MOTIONS

2 Consult Civil Local Rules 7-1 through 7-5 and this
3 Court's standing orders regarding motion practice. Motions
4 for **summary judgment** must be accompanied by a statement of the
5 material facts not in dispute supported by citations to
6 admissible evidence. The parties must file a joint statement
7 of undisputed facts where possible. If the parties are unable
8 to reach complete agreement after meeting and conferring, they
9 must file a joint statement of the undisputed facts about
10 which they do agree. Any party may then file a separate
11 statement of the additional facts that the party contends are
12 undisputed. A party who without substantial justification
13 contends that a fact is in dispute is subject to sanctions. A
14 Chambers copy of all briefs must be submitted on a diskette
15 formatted in WordPerfect 6.1, 8, 9 or 10 (Windows) or
16 WordPerfect 5.1 (DOS).

17 4. MEDIATION

18 By agreement of the parties, this matter has been
19 referred for court-sponsored mediation to be conducted within
20 sixty days, if possible. The parties must promptly notify the
21 Court whether the case is resolved at the mediation.

22 5. SETTLEMENT

23 This case has been referred for assignment to a
24 Magistrate Judge to conduct a settlement conference in January
25 or February 2006, in the event the case is not resolved at the
26 mediation. Counsel will be contacted by that judge's chambers
27 with a date and time for the conference.

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1 6. PRETRIAL CONFERENCE

2 Not less than thirty days prior to the date of the
3 pretrial conference, the parties must meet and take all steps
4 necessary to fulfill the requirements of this Order.

5 Not less than twenty days prior to the pretrial
6 conference, the parties must: (1) serve and file a joint
7 pretrial statement, containing the information listed in
8 **Attachment 1**, and a proposed pretrial order; (2) serve and
9 file trial briefs, motions in limine and statements
10 designating excerpts from discovery that will be offered at
11 trial (specifying the witness and page and line references);
12 (3) exchange exhibits, agree on and number a joint set of
13 exhibits and number separately those exhibits to which the
14 parties cannot agree; (4) deliver all marked trial exhibits
15 directly to the courtroom clerk, Ms. Scott; (5) deliver one
16 extra set of all marked exhibits directly to Chambers; and (6)
17 submit all exhibits in three-ring binders. Each exhibit must
18 be marked with an exhibit label as contained in **Attachment 2**.

19 No party shall be permitted to call any witness or offer
20 any exhibit in its case in chief that is not disclosed at
21 pretrial, without leave of Court and for good cause.

22 Lead trial counsel for each party must meet and confer in
23 an effort to resolve all disputes regarding anticipated
24 testimony, witnesses and exhibits. All motions in limine and
25 objections to witnesses or exhibits will be heard at the
26 pretrial conference. Not less than ten days prior to the
27 pretrial conference, the parties must serve and file any
28 objections to witnesses or exhibits or to the qualifications

1 of an expert witness. Motions in limine must be filed and
2 served not less than twenty days prior to the conference.
3 Oppositions must be filed and served not less than ten days
4 prior to the conference. There shall be no replies.

5 Not less than twenty days prior to the pretrial
6 conference the parties must serve and file requested voir dire
7 questions, jury instructions, and forms of verdict. The
8 following jury instructions from the *Manual of Model Civil*
9 *Jury Instructions for the Ninth Circuit* (1997 ed.) will be
10 given absent objection: 1.1-1.12, 2.1-2.2, 3.1-3.3, 3.5-3.8,
11 4.1-4.3. Do not submit a copy of these instructions. Counsel
12 must submit a joint set of case specific instructions. Any
13 instructions on which the parties cannot agree may be
14 submitted separately. The Ninth Circuit Manual should be used
15 where possible. Each requested instruction must be typed in
16 full on a separate page with citations to the authority upon
17 which it is based. Proposed jury instructions taken from the
18 Ninth Circuit Manual need only contain a citation to that
19 source. Any modifications made to proposed instructions taken
20 from a manual of model instructions must be clearly indicated.
21 In addition, all proposed jury instructions should conform to
22 the format of the Example Jury Instruction attached to this
23 Order. Not less than ten days prior to the pretrial
24 conference, the parties must serve and file any objections to
25 separately proposed jury instructions.

26 Jury instructions that the Court has given in prior cases
27 may be downloaded from the Northern District website at
28 <http://www.cand.uscourts.gov>. (Instructions are located on

1 the "Judge Information" page for Magistrate Judge Zimmerman.)
2 The Court will generally give the same instructions in cases
3 involving similar claims unless a party establishes, with
4 supporting authorities, that the instruction is no longer
5 correct or that a different instruction should be given.

6 All proposed jury instructions, motions in limine, forms
7 of verdict and trial briefs must be accompanied by a floppy
8 diskette containing a copy of the document formatted in
9 WordPerfect 6.1, 8, 9 or 10 (Windows) or WordPerfect 5.1
10 (DOS).

11 At the time of filing the original with the Clerk's
12 Office, two copies of all documents (but only one copy of the
13 exhibits) must be delivered directly to Chambers (Room 15-
14 6688). Chambers' copies of all pretrial documents must be
15 three-hole punched at the side, suitable for insertion into
16 standard, three-ring binders.

17 Dated: August 9, 2005

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19 Bernard Zimmerman
20 United States Magistrate Judge
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EXAMPLE PROPOSED JURY INSTRUCTION
For Chambers of Magistrate Judge Zimmerman

A proposed jury instruction should contain the following elements in the following order: (1) the name of the party submitting the instruction; (2) the title of the instruction; (3) the text of the instruction; (4) the authority for the instruction; (5) blank boxes for the Court to note whether it gives the instruction, refuses to give it, or gives it as modified. The following proposed instruction contains these elements.

(Party)'s Proposed Instruction No. ____.

[Title]

[Text]

[Authority]

_____ GIVEN _____ REFUSED _____ GIVEN AS MODIFIED

ATTACHMENT 1

The parties must file a joint pretrial conference statement containing the following information:

(1) The Action.

- (A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.
- (B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) The Factual Basis of the Action.

- (A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.
- (B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.
- (C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.
- (D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

(3) Trial Preparation.

A brief description of the efforts the parties have made to resolve disputes over anticipated testimony, exhibits and witnesses.

1 (A) Witnesses to be Called. In lieu
2 of FRCP 26(a)(3)(A), a list of
3 all witnesses likely to be
4 called at trial, other than
5 solely for impeachment or
rebuttal, together with a brief
statement following each name
describing the substance of the
testimony to be given.

6 (B) Estimate of Trial Time. An
7 estimate of the number of court
8 days needed for the presentation
9 of each party's case, indicating
possible reductions in time
through proposed stipulations,
agreed statements of facts, or
expedited means of presenting
testimony and exhibits.

10 (C) Use of Discovery Responses. In
11 lieu of FRCP 26(a)(3)(B), cite
12 possible presentation at trial
13 of evidence, other than solely
14 for impeachment or rebuttal,
15 through use of excerpts from
16 depositions, from interrogatory
17 answers, or from responses to
requests for admission. Counsel
must state any objections to use
of these materials and that
counsel has conferred respecting
such objections.

18 (D) Further Discovery or Motions. A
19 statement of all remaining
motions, including motions in
limine.

20 (4) **Trial Alternatives and Options.**

21 (A) Settlement Discussion. A
22 statement summarizing the status
23 of settlement negotiations and
24 indicating whether further
negotiations are likely to be
productive.

25 (C) Amendments, Dismissals. A
26 statement of requested or
27 proposed amendments to pleadings
or dismissals of parties, claims
or defenses.

28 (D) Bifurcation, Separate Trial of
Issues. A statement of whether

1 bifurcation or a separate trial
2 of specific issues is feasible
3 and desired.

4 (5) **Miscellaneous.**

5 Any other subjects relevant to the trial of the action,
6 or material to its just, speedy and inexpensive determination.
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1 **ATTACHMENT 2**

2 **USDC**
3 Case No. CV04-02504 BZ
4 **JOINT** Exhibit No. _____
5 Date Entered _____

6 Signature _____
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9 **USDC**
10 Case No. CV04-02504 BZ
11 **JOINT** Exhibit No. _____
12 Date Entered _____

13 Signature _____
14 _____
15 _____

16 **USDC**
17 Case No. CV04-02504 BZ
18 **PLNTF** Exhibit No. _____
19 Date Entered _____

20 Signature _____
21 _____
22 _____

23 **USDC**
24 Case No. CV04-02504 BZ
25 **PLNTF** Exhibit No. _____
26 Date Entered _____

27 Signature _____
28 _____
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30 **USDC**
31 Case No. CV04-02504 BZ
32 **JOINT** Exhibit No. _____
33 Date Entered _____

34 Signature _____
35 _____
36 _____

37 **USDC**
38 Case No. CV04-02504 BZ
39 **JOINT** Exhibit No. _____
40 Date Entered _____

41 Signature _____
42 _____
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44 **USDC**
45 Case No. CV04-02504 BZ
46 **PLNTF** Exhibit No. _____
47 Date Entered _____

48 Signature _____
49 _____
50 _____

51 **USDC**
52 Case No. CV04-02504 BZ
53 **PLNTF** Exhibit No. _____
54 Date Entered _____

55 Signature _____
56 _____
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59 **USDC**
60 Case No. CV04-02504 BZ
61 **DEFT** Exhibit No. _____
62 Date Entered _____

63 Signature _____
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67 **USDC**
68 Case No. CV04-02504 BZ
69 **DEFT** Exhibit No. _____
70 Date Entered _____

71 Signature _____
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